

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ANDERSON UNION HIGH SCHOOL
DISTRICT AND SHASTA COUNTY
SPECIAL EDUCATION LOCAL PLAN
AREA.

OAH CASE NO. 2012090493

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On September 13, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming the Anderson Union High School District (District) and the Shasta County Special Education Local Plan Area (SELPA).

On September 27, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. The SELPA did not join in the NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.⁴ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act and the relative informality of the due process hearings it authorizes.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student alleges seven claims in the complaint, six of which are sufficient and one of which is insufficient. Student’s first claim is that, based on information known to it, the District failed to timely and properly assess Student for special education eligibility. The claim does not mention any time at which the District allegedly was or became responsible for Student’s special education, nor when the obligation to assess allegedly arose, nor does it

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁸ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

mention what information might have been known to the District or when it was known. When coupled with the additional allegation that Student has been in and out of unnamed hospitals and schools at unspecified dates in the recent past, the first claim does not give the District adequate notice of the charge against it. There is no way for the District to determine what information Student refers to, when it allegedly should have known of that information, or when it should allegedly have assessed Student.

Student's second claim is that the assessment eventually performed by the District was unreliable and flawed in a number of ways, including failure to have the assessment performed by a qualified professional, failure to use appropriate assessment tools, failure to identify a relevant emotional condition, and failure to be comprehensive. These allegations invoke specific and familiar statutory requirements for assessments and are adequate to put the District on notice of the claim. Fairly read, the allegation is that the District conducted only one assessment, so the District should have no difficulty identifying the assessment at issue.

Student's third claim is that the District conducted an individualized education program (IEP) team meeting at which it proceeded to make a recommendation about Student's needs in the absence of sufficient or accurate information to do so. That allegation is adequate because it invokes familiar statutory standards for the proper conduct of an IEP team meeting, and identifies the allegedly inadequate information by making reference to the allegedly inappropriate assessment. The District's NOI does not address the third claim.

Issues four, five, six and seven allege in various ways that the District failed to offer Student a FAPE. Issue Four states in conclusory language that the District failed to offer Student a FAPE. Issue Five alleges that the District's determination that Student did not require a residential placement was not supported by the evidence, and Issue Six alleges that the District's refusal to support Student's current residential placement was unsupported by the evidence at the IEP team meeting and inconsistent with its obligation to offer a FAPE. In Issue Seven, Student alleges that "the District failed to properly assess [Student] and failed to offer her an appropriate placement and services" In addition, elsewhere in the complaint Student alleges that she is seriously emotionally disturbed and has been unilaterally placed by Parents in a named residential placement as a result. Taken together, these allegations adequately allege that the District failed to offer Student a FAPE because it failed to offer to continue Student's current residential placement, which she needed due to the nature and seriousness of her emotional disturbance. While the four allegations are repetitive and overlapping, that does not make them inadequate for the purpose of an NOI. Collectively they adequately inform the District of the nature of Student's claim, and any redundancy can be eliminated at the prehearing conference.⁹

⁹ In Issue Seven Student also alleges that the District should pay for Parents' expenses in making the unilateral placement. While this allegation is more in the nature of a proposed resolution than a claim of unlawful conduct by the District, it is simply redundant

ORDER

1. Issues Two through Seven in Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue One in Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰

4. The amended complaint shall comply with the requirements of title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues Two through Seven in Student's complaint as to the District and Issues One through Seven as to the SELPA.

Dated: October 1, 2012

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

because the complaint also contains a specific proposed resolution asking for reimbursement of those expenses.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.